

***United States Court of Appeals
for the Second Circuit***



**APPELLEE'S
APPENDIX**

77-1124

IN THE
United States Court of Appeals
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

JOSEPH S. WILLIAMS,
Defendant-Appellant.

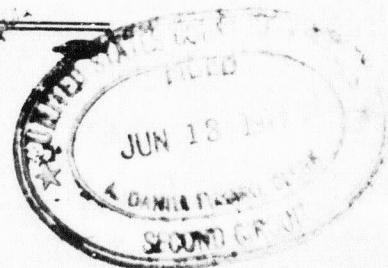
ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK.

APPENDIX FOR APPELLEE

RICHARD J. ARCARA,
United States Attorney,
Western District of New York,
Attorney for Plaintiff-Appellee,
502 United States Courthouse,
Buffalo, New York 14202.

THEODORE J. BURNS,
Assistant United States Attorney,
of Counsel.

BATAVIA TIMES, APPELLATE COURT PRINTERS
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TESTIMONY.

Witness for Defendant:

Williams, Joseph

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APPENDIX.

CRIMINAL DOCKET - U.S. District Court

OFFENSE MO
OFFENSE MO
MEANOR Mis
FELONY Fel

JUDGE/MAGISTRATE Assigned U.S. vs. WILLIAMS, JOSEPH S.

0905
209 1
District Office

Disp./Sentence

(LAST, FIRST, MIDDLE)

Case Filed Mo 6 17 76 76-84 1

No. of Defs 1

Yr 76 Docket No. 76-123 M

Def. 1

U.S. TITLE SECTION

18-1708

18-495

OFFENSES CHARGED

Knowingly possessing stolen mail (Ct. 1) (Not Guilty) 1

Utter & publish as true a U.S. Treas. Check, knowing the same to be forged (Ct. 2) (Guilty) 1

ORIGINAL COUNTS

SUPERSEDING COUNTS

U.S. MAG CASE NO 76-123 M

BAIL - RELEASE

AMT Denied Set

1,000

6/3/76

10% Deposit Surety Bond Collateral 3rd Prty Cust Other

II. KEY DATES & INTERVALS

ARREST or U.S. Custody Began 6/3/76

High Risk Date 6/17/76

INDICTMENT Information 6/17/76

Indict Waived

ARRAIGNMENT 6/22/76

1st Plea

Final Plea

TRIAL

Trial Set For 12/7/76

Voir Dire 12/16/76

Trial Began 12/16/76

Trial Ended 12/22/76

SENTENCE

Disposition of Charges 12/22/76 3/7/77

Convicted

Acquitted

Dismissed

On All Charges On Lesser Offense(s) ct.

WOP: WP

On Government's Motion

MAGISTRATE

Search Warrant Issued

Summons Issued

Arrest Warrant Issued

COMPLAINT

DATE 6/2/76 6/2/76

INITIAL/NO. EFM/090A EFM/090A

INITIAL APPEARANCE DATE 6/3/76

PRELIMINARY EXAMINATION OR REMOVAL HEARING

DATE Scheduled 6/17/76

DATE Held

WAIVED NOT WAIVED INTERVENING INDICTMENT

OUTCOME: DISMISSED

HELD FOR GJ OR OTHER PROCEEDING IN THIS DISTRICT

HELD FOR GJ OR OTHER PROCEEDING IN DISTRICT BELOW

18 USC §§1708 & 495 Poss. of U.S. Treasury ck. taken from mail and uttering U.S. Treasury ck., knowing endorsement to be forged.

U.S. Attorney or Asst.

Theodore Burns

U.S. Courthouse, Buffalo, N.Y.

14202 (432-3479)

ATTORNEYS

Defense X CJA Ret. Waived Self. None / Other PD. CD

James F. Allen

1260 Delaware Avenue

Buffalo, N.Y. 14209

(716) 884-4700

* Show last names and suffix numbers of other defendants on same indictment/information.

DATE (DOCUMENT NO.) PROCEEDINGS EXCLUDABLE DELAY (a) (b) (c) (d)

6/3/76 Deft. appeared without counsel at Initial Appearance; he was advised of the Compl. and of his rights under Rule 5, RCP. Deft. req. assignment of counsel.

6/3/76 Atty. James Allen accepted assignment.

6/17/76 Hearing adjd. at req. of def. atty. Rescheduled 6/24/76.

6/17/76 Deft. indicted.

6/17/76 1 Filed Indictment

6/22/76 2 Filed Magistrate's warrant of arrest, executed 6/3/76, with complaint

6/22/76 3 Filed \$1,000 unsecured bond

6/22/76 4 Filed Cy. 5 of CJA-20 - Order appointing James F. Allen, as counsel, Maxwell, Mag.

6/22/76 P.B.M. - Deft. arraigned. Pled not guilty. Court directed that the attorneys meet within a week to accomplish voluntary discovery. Further requests under rule 16 and motions under Rules 6 & 7

2

CRIMINAL DOCKET

Cr-76-84

7-1966

DATE 1976	PROCEEDINGS	CLERK'S FEES	
		PLAINTIFF	DEFENDANT
Dec. 15	Filed subpoena - Irene Bensen, ret. no service		
Dec. 20	Filed subpoena Chester Shear, served 12/14/76		
Dec. 17	Filed subpoena - James Ridgeway, served 12/17/76		
Dec. 23	Filed one subpoena Robert Pitts served 12-20-76.		
Dec. 28	Filed deft's motion for extension of time to file a motion for a judgment of acquittal after a verdict of guilty.		
Dec. 22	Jury continues deliberations from yesterday. Jury returns with the following verdict. Deft. is guilty on count 2 of the indictment. Sentence is deferred until 2-7-77.		
Dec. 20	Trial continues from yesterday. Govt. rests. Deft moves for dismissal of indictment. Motion denied.		
Dec. 21	Trial continues from yesterday. Jury returns to deliberate upon their verdict. Jury returns with a verdict of not guilty on count one of the indictment. Jury reports to court they are not able to agree upon a verdict on count two of the indictment. Court instructs jurors further and they retire to further deliberate on count two. Adj. to 1-22-76.		
<u>1977</u>			
Jan. 24	Return date for deft's motion. On application of deft. adj. to 2/7/77 for filing of memo. Oral argument to be heard on 2/14/77		
Feb. 9	Filed Deft's memorandum in support of motion for a judgment of acquittal after a verdict of guilty		
Feb. 22	Filed Government's response to motion for Judgment of Acquittal		
Feb. 4	Sentence scheduled for today but adj. by the court to 2/22/77 because of the storm		
Feb. 14	Oral argument scheduled but not held - Adj. 2/23/77 - Govt. to file brief this week.		
Feb. 22	For sentence - Adj. 2/24/77		
Feb. 24	For sentence - Adj. 3/3/77		
Mar. 4	For sentence. Adj. to 3/7/77		
Mar. 7	For sentence. ^{or 2} Defendant is remanded to the custody of the Atty. General for a period of Eighteen (18) Months. CURTIN, J. ; Bail to continue during pendency of the appeal.		
Mar. 7	Filed Deft's Notice of appeal		
Mar. 7	Filed \$1,000 unsecured bond on appeal		
Mar. 7	Filed Judgment and Commitment. Commitment issued to the Marshal.		
Mar. 24	Filed 2 volumes of trial transcript commencing on 12-7-76 and resuming on 12-20-76.		

[illegible]

* * *

harmful at present.

THE COURT:

You tell us, do you want Mr. Burns to doctor the photographs in any way?

MR. ALLEN:

Well, I would like to see at least the reference to the Buffalo Police Department extracted from the photographs, but under the circumstances, I mean, Mr. Ridgeway has now testified that he and Mr. Williams did some bits together and Mr. Williams may very well be taking the stand and if he does, I am sure he will be crossed examined with respect to his prior criminal record.

THE COURT:

The only thing they can question him about are convictions.

MR. ALLEN:

Judge, there is something that I wanted to take up about that.

THE COURT:

Let us do that now so that we are not here Monday. We have some time now, so let us do it now.

MR. ALLEN:

Okay. With respect to the question of Mr. Williams' criminal record, Judge

--

THE COURT:

First of all, before I get involved

ARTHUR J. CAPRIO
OFFICIAL REPORTER
BUFFALO, NEW YORK

in the event you meet with Mr. Burns and

1 you tell him, Mr. Burns, you tell Mr.
2 Allen what you propose to question about
3 as far as prior record.

4 MR. BURNS: Yes, your Honor.

5 THE COURT: You know the standard under the
6 Federal Rules.

7 MR. BURNS: Right, felonies, ten years.

8 THE COURT: Nothing beyond ten years.

9 MR. BURNS: Right.

10 THE COURT: Felonies.

11 MR. BURNS: Or crimes involving - -

12 THE COURT: And also felonies which may have
13 some relationship to credibility or to
14 this case, say an assault or something,
15 it may not have anything to do with
16 credibility.

17 MR. ALLEN: Judge, that is one of the things
18 I wanted to ask about.

19 THE COURT: You talk about it.

20 MR. BURNS: Okay. We can thrash that out, I
21 think. We can go through all the
22 convictions we will offer and if Mr.
23 Allen objects, we will thrash that out.

24 THE COURT: Talk about the photographs and
25 come back and we will put something on

1 the record about what we are going to do.
2 Let me know when you are ready.
3 MR. ALLEN: Okay, Judge.
4 MR. BURNS: Today?
5 THE COURT: Do you want to look at the, - Judge
6 Waterman's decision in the Harrington
7 case and in the DeSena case?
8 MR. ALLEN: Judge, I have read those decisions
9 and my understanding, as I see it, I
10 don't really particularly think at this
11 stage of the proceedings there is any
12 absolute necessity for the Government
13 to have these photographs, but again,
14 I am not going to object to their being
15 admitted.
16 THE COURT: I want to know ahead of time what
17 your position is.
18 MR. ALLEN: My position is that - -
19 THE COURT: Talk to Mr. Burns about it and
20 we will take it up when I return.
21
22 (Recess taken at 3:10 p.m.)
23
24 * * * * *
25

1 PROCEEDINGS: After recess, 3:35 p.m.
2 APPEARANCES: As before noted.
3 (Defendant present.)
4 (Jury not present.)
5
6 THE COURT: Mr. Burns and Mr. Allen.
7 MR. BURNS: Your Honor, we discussed a couple
8 of matters. First of all, as far as
9 the cross examination of the defendant,
10 if he should take the stand, the
11 Government would propose to cross examine
12 him regarding two felony convictions,
13 one for which he was sentenced in July,
14 July 18, 1968 for attempted forgery.
15 He was sentenced to two and a half to
16 five years at Attica. The second felony
17 conviction we would propose to cross
18 examine him about would be his conviction
19 in this court in January of 1975 for
20 possession of stolen mail, a United
21 States Treasury check, also a felony.
22 THE COURT: Is that by a plea of guilty or
23 trial?
24 MR. BURNS: Both were by plea of guilty.
25 THE COURT: Mr. Allen.

1 MR. ALLEN:

2 Well, your Honor, basically, my
3 feeling is that the issue of credibility
4 on cross examination can probably be
5 attacked without the use, or without
6 the questioning in that regard and that
7 any questioning with respect to these
8 two felonies would be extremely preju-
9 dicial to Mr. Williams' case because of
10 the fact that the conviction are for
11 charges which are so similar in nature
12 to the charges which have been filed
13 against him here and I think that the
14 simple and easy step for the jury to take
15 is, well, he did it before and admitted
16 it, pled guilty and served time on it,
17 so it is certainly likely that he did
18 it again.

19 THE COURT:

20 I will think about it over the
21 weekend.

22 MR. ALLEN:

23 Very good.

24 THE COURT:

25 Have you agreed about the procedure
to follow in the use of photographs?

MR. ALLEN:

Yes, we have, Judge.

MR. BURNS:

What I propose to do, your Honor,
is offer Government Exhibit 4 as is,

* * *

H T Noel & F F Knicker

1 JOSEPH WILLIAMS (45 D Willard Park, Buffalo,
2 New York), the defendant herein, having been first duly
3 sworn as a witness in his own behalf, was examined and
4 testified as follows:

5

6 DIRECT EXAMINATION BY MR. ALLEN:

7 MR. ALLEN: Your Honor, may we approach the
8 bench a moment?

9 THE COURT: Mr. Knisley.

10

11 (Sidebar conference held between
12 the Court and counsel as follows:

13

14 MR. ALLEN: Judge, on Friday, you indicated you
15 wanted to think about it over the week-
16 end and you said at that time you were
17 going to think about convictions.

18 THE COURT: Let us have the jury step out so
19 anything you want to put on the record
20 we can do more conveniently.

21

22 (Sidebar conference concluded.)

23

24 THE COURT: Ladies and gentlemen, there is
25 something I must take up with the lawyer

1 now. I do not think it will take very
2 long. I will ask you to walk into the
3 corridor, please.
4

5 (Jury escorted from the courtroom.
6

7 THE COURT:

Mr. Burns, in regard to this
8 problem, if Mr. Williams takes the stand
9 and testifies, what do you propose to
10 cross examine him about?

11 MR. BURNS:

Your Honor, as far as - -

12 THE COURT:

I mean as far as past convictions
13 and so forth.

14 MR. BURNS:

As far as past convictions, your
15 Honor, the Government would ask him
16 about two prior convictions. I have
17 certified copies of the convictions with
18 me. One was a conviction on May 27,
19 1968 after a plea of guilty to attempt
20 forgery in the third degree, for which
21 Mr. Williams received a sentence of
22 two and a half to five years at Attica
23 State Prison.

24 THE COURT:

That was in - -

25 MR. BURNS:

May of 1968.

.. .. .

U S A I R U W V .

1 Government urges that the Government be
2 allowed to cross examine him on the
3 convictions.

4 THE COURT:

Mr. Allen, anything to say about
5 this?

6 MR. ALLEN:

Only, your Honor, to repeat what
7 I mentioned on Friday, that I believe
8 that the probative value of testing Mr.
9 Williams with respect to these offenses
10 is outweighed by the prejudice that
11 would be done to him because of the
12 similarity of the offenses. I don't
13 particularly object to Mr. Williams
14 being questioned concerning his criminal
15 record because he, obviously, has a
16 criminal record and because he is not
17 going to deny that criminal record on
18 the witness stand. As a matter of
19 fact, on direct examination, I intend
20 to bring out that fact, that he does
21 have a criminal record and prior
22 convictions and I don't mind the U. S.
23 Attorney questioning him with respect
24 to his previous criminal convictions.
25 The only difficulty I have is the

1 specific convictions are so alike.

2 THE COURT: You mean you just want him to say,
3 "Do you have a criminal record"?

4 MR. ALLEN: Well, I intended to ask him the
5 same question.

6 THE COURT: The inference to the jury on that
7 may be worse than the actual facts.

8 MR. ALLEN: It may be worse, but it may not
9 be worse also. My problem, your Honor,
10 is especially the charge with respect
11 to the plea with respect to the conviction
12 in the Federal Court, possession
13 of U. S. Treasury checks. I think it is
14 a very short jump for the jury to make
15 based upon that particular offense, to
16 make the assumption that the same offense
17 was committed here. I have no difficulty
18 with the question of his criminal
19 record, to be honest with you. He
20 intends to admit it anyhow.

21 THE COURT: They both have to do with the
22 question of honesty.

23 MR. ALLEN: Absolutely.

24 THE COURT: And the weighing of the credibility
25 of the witness. Mr. Burns.

1 MR. BURNS:

Well, your Honor, I think that
2 they do affect the credibility of the
3 witness. Now, granted, they are similar
4 in character, but they are not inflam-
5 matory, they are not drug convictions,
6 not rape, murder and so forth.

7 THE COURT:

I would not let in rape or murder,
8 probably.

9 MR. BURNS:

I think they would, in fact, be
10 inflammatory and highly prejudicial, but
11 there is no question the defendant's
12 record, if brought out in examination,
13 is going to be prejudicial, but I think
14 the question in this case is is it
15 probative and I think where the offense
16 do relate to honesty, there is no ques-
17 tion that they are relevant. Congress
18 must have meant something when it
19 included these provisions in the Federa
20 rules that you could use these convic-
21 tions and I think that they intended
22 to keep from the jury the highly in-
23 flammatory type of prior convictions,
24 as I say, drug offenses, for example, or
25 a bank robbery where the person might,

1 a jury might tend to center on a
2 person's bad character and convict him
3 because of that alone. I think that
4 does have a specific purpose. These
5 particular convictions do relate so
6 closely to honesty that I think it is
7 fair for the Government to cross examine
8 him on it, particularly if Mr. Allen
9 is going to bring out his criminal record.

10 THE COURT:

I will permit it as to these two.

11 Have the jury return, Mr. White.

12
13 (Jury returns to the courtroom.)
14

15 BY MR. ALLEN:

16 Q Mr. Williams, you are the defendant in this action
17 brought against you by the prosecution on a charge of
18 possession of treasury checks and uttering treasury
19 checks, isn't that correct?

20 A Yes.

21 Q Okay. Now, I am going to ask you several questions
22 concerning your activities of May 15, 1976. In the
23 event you don't understand what I am saying, or if you
24 have any questions, please say so.

25 A Okay.

* * *

U T S U C P S S

1 that day that you left Robert Pitts' house to go any-
2 place else?

3 A No, I didn't.

4 Q Okay. Do you remember what you were drinking that
5 day?

6 A Yes, I do.

7 Q What was it?

8 A I was drinking J.B. Scotch and milk.

9 Q J.B. Scotch and milk together?

10 A Yes, I made some, yes.

11 Q Okay. How often have you seen Mr. Pitts since May 15,
12 1976, if you can remember?

13 A I seen him a few times. I was by the house a couple, -
14 well, one or two times and, you know, I see him. I
15 didn't see him regularly every day, but I did see him,
16 you know.

17 Q Okay. Now, tell me, Mr. Williams, have you ever
18 been convicted of a crime?

19 A Yes, I have.

20 Q Have you ever gone to jail for the conviction?

21 A Yes, I have.

22 Q Okay. Have you ever had a trial before this?

23 A No. This is the first trial I ever had.

24 Q Now, can you account for any reason, can you give any
25 reason in your mind why somebody would charge you with

1 having held this check in your possession?

2 A No, I don't. I just can't understand it. I don't
3 know.

4 MR. ALLEN: Okay. I have no further questions.

5 THE COURT: Mr. Burns.

6
7 CROSS EXAMINATION BY MR. BURNS:

8 Q Mr. Williams, how long have you known James Ridgeway?

9 A Well, I just know of him, you know what I mean,
10 maybe five or six years, you know, something like that.

11 Q Aren't you a good friend of Mr. Ridgeway?

12 A No, I am no good friend of his.

13 Q Well, what is the basis of your acquaintance with him?

14 A At the time, I think when I did some time, he happened
15 to be in jail at the same time.

16 Q Have you seen him on the streets?

17 A Once in a while I see him. You know, I just speak
18 to him, that's all.

19 Q Don't you get together once in a while?

20 A No, I don't get together with him.

21 Q You are not good buddies?

22 A No, he is no good friend of mine, no good buddies.

23 Q Did you see him in court last Friday?

24 A Last Friday, yes, I see him when he came in court here.

25 Q Did you see him before he came in court?

* * *

H. F. And N. F. F. Knicker

1 drinking, but I wasn't watching what they was
2 drinking. I was just enjoying myself, you know, the
3 young people.

4 Q Mr. Williams, since May 15, 1976, you were hospitalized,
5 weren't you, at one time?

6 A One time for five days, I was in the Veterans Hospital.
7 I got robbed and assaulted, stabbed through the hand
8 and shoulder.

9 Q And during that period of time, did you lose any
10 weight?

11 A No, I didn't.

12 Q And what is your weight today?

13 A I weigh about two twenty-four.

14 Q You weigh two hundred twenty-four today?

15 A I might be weighing two twenty-five.

16 Q And how much did you weigh back in May of '76?

17 A In May of '76, I guess I weighed around two twenty-
18 eight, something like that, might have lost one or
19 two pounds or gained it back. I don't know.

20 Q Now, Mr. Williams, on May 27, 1968, pursuant to your
21 plea of guilty, you were convicted of attempted
22 forgery in the third degree, were you not?

23 A Yes, I were.

24 Q And, Mr. Williams, on June 16, 1975, in this court,
25 in this very courtroom, you again pleaded guilty to

1 another offense and were then convicted of possession
2 of stolen mail, a United States Treasury check, is that
3 not correct?

4 A That is correct, I was.

5 MR. BURNS: I have no further questions.

6 THE COURT: Anything else, Mr. Allen? Nothing
7 further. Thank you, Mr. Williams. Mr.
8 Allen, anything further?

9 MR. ALLEN: That is it, your Honor.

10 THE COURT: Ladies and gentlemen, maybe if you
11 step in the corridor for a minute. Do
12 you have any rebuttal, Mr. Burns?

13 MR. BURNS: No, your Honor.

14
15 (Jury escorted from the courtroom.)
16

17 THE COURT: I suppose the next thing is to
18 talk about the problems relating to the
19 exhibits and discuss requests to charge
20 and set a time for summations. Anything
21 else we should do with the jury before
22 we do that?

23 MR. BURNS: Nothing I can think of, your Honor.

24 THE COURT: Should we have the jury come back
25 at 2:30?

* * *

1 could have enlightened us on this score
2 simply was unable to say why Ridgeway
3 would lie, and also another point you
4 might want to remember in your delibera-
5 tions is that Mr. Williams, - Mr. Williams
6 is a man who admitted that he had been
7 convicted on two separate occasions
8 during the last eight years, felonies;
9 one involving attempted forgery or a
10 particular document.

11 THE COURT:

Just a minute, Mr. Burns. The only
12 reason, ladies and gentlemen, and I will
13 get to this in the charge, the only
14 reason that testimony was admitted was
15 that under the law it may have something
16 to do with credibility. It cannot be
17 considered by you as direct evidence that
18 he had any involvement with these checks.
19 You may weigh it only as to whether or
20 not he is a person that you can believe,
21 and simply that.

22 MR. BURNS:

Yes. I hope, - I certainly don't
23 want to leave any other impression in
24 your mind either. I am stressing these
25 convictions for this purpose, or bringing

1 it to your attention; here is a man who
2 has been convicted of attempted forgery
3 and on another occasion, possession of
4 a U.S. Treasury check stolen from the
5 mails in 1975. I am bringing these to
6 your attention so that you can determine
7 for yourself whether or not Mr. Williams
8 himself is a believable witness. Now,
9 both of these offenses involved deceit
10 and dishonesty. I urge you, ladies and
11 gentleman, that a person who has admitted
12 being deceitful and a person who has
13 admitted being dishonest on prior occasions
14 by pleading guilty to certain crimes is
15 a much less believable, much less credible
16 witness on the stand than are the other
17 witnesses in the case such as Mr. Ridgeway
18 who has not been impeached in any manner
19 by any conviction of any crimes, and also
20 Mrs. Benson, and so, ladies and gentlemen,
21 I think those are the essential points
22 which you should ponder and review while
23 you are in the jury room deliberating the
24 facts of this case.

25 I think I have outlined all the points

* * *

U T Bond & F F Knicker

1 1650 Genesee Street. He said he never
2 saw Irene Benson until yesterday in court.
3 He admitted that he knew Ridgeway but I
4 don't even thi. it is an admission. He
5 said that he knew him and he said that
6 he couldn't figure out any reason for him
7 to do that. He can't, I can't. The
8 only reason I can think of is that they
9 did it and they are trying to pin it on
10 him.

11 Joe Williams is no angel and he
12 doesn't mean to say that he is, and as
13 a matter of fact that is the reason I
14 put him on the witness stand and I asked
15 him if he had been convicted of a crime.
16 There is no question about the fact that
17 Joe Williams has been involved with the
18 law before, none whatsoever, but what we
19 don't know, or I should say that what Mr.
20 Williams didn't explain was that he never
21 had a trial before. He said he never did.
22 What that means is that he always pled
23 guilty. Whenever he did something wrong
24 he admitted it. He said, "All right, I
25 did it" and he took his medicine. Mr.

1 Burns would have you believe that because
2 he has been convicted of charges relating
3 to similar matters to this, that that
4 means that he is deceitful. Well, it
5 doesn't mean that at all. It means he
6 might be a thief or he might have been a
7 thief and he might have done some thievery
8 previous but the fact is that he admitted
9 it when he did it. He didn't do it this
10 time. Why in the world would a man go
11 to trial when he knows full well that he
12 had done it if he thought there was anything
13 besides a frame. It doesn't make any
14 sense.

15 I take that back. When I said there
16 was one thing clear in this case and
17 that is that Irene Benson stole this
18 check, I take that back. That I am not
19 even sure was clear, that she was the one
20 that stole this check. I am pretty sure
21 it was clear. As a matter of fact, I
22 even suspected it before Ridgeway got
23 on the stand, although it was just a
24 suspicion. The one thing that is clear,
25 though, is that somehow or another, the

* * *

H T Noel & E F. Knisley

1 PROCEEDINGS: After recess, 4:15 p.m.

2 APPEARANCES: As before noted.

3 (Defendant present.)

4 (Jury present.)

5
6 CHARGE OF THE COURT

7
8 THE COURT:

Ladies and gentlemen, at this
stage of the trial, it is my obligation
to explain the law to you as well as I
can. It is your job to try to under-
stand it as well as you can and apply
the law which I charge to you to the
facts which you have garnered from the
testimony of the witnesses. After that,
you will go to the jury room and deliber-
ate. In this case, we will ask the
alternate jurors to return tomorrow
morning as well, and at that time, the
jury will be sworn at, I think, 9:30
in the morning and then you will go to
the jury room. The exhibits will be
sent with you and you deliberate there.
Do not talk over on the way home or on
your way in tomorrow with other jurors

25
--

1 and certainly, do not discuss this case,
2 the facts or the law with anyone over-
3 night.

4 Deliberation means that you care-
5 fully set forth your reasoning about
6 what the facts seem to be to you, giving
7 good reason. You may not use as reason,
8 any arguments based upon bias or
9 prejudice or sympathy or considerations
10 of sentence or the fact that Mr. Williams
11 was convicted before. That, as I've
12 explained to you, may only be considered
13 by you in determining whether or not he
14 told the truth here when he testified,
15 but simply because a man assaulted, for
16 example, a person at any particular time
17 and was convicted of it does not mean
18 that he would assault another person on
19 a subsequent occasion. It does not
20 mean that if a man was convicted of
21 some kind of a charge involving the
22 improper use of a check that he, on a
23 subsequent occasion, would do the same
24 thing.

25 In your deliberation, you not only

1 give your ideas about what the facts
2 are, how the facts apply to the law,
3 but you will also listen, listen to the
4 arguments and discussions of your fellow
5 jurors and you take all of that into
6 your consideration and from that mix
7 you arrive at a unanimous verdict.

8 If you have opinions which are
9 conscientious and are reasonable, you
10 should not give them up for any petit
11 reason, any improper reason. On the
12 other hand, if, after listening to the
13 arguments and discussion of your fellow
14 jurors you find that you are in error,
15 then you should not hesitate to change
16 your mind again for some reason which is
17 improper as I have explained it to you.

18 In this case, the exhibits will be
19 delivered to you. We have here photo-
20 graphs, one which everyone admits is
21 that of Joseph Williams and then we have
22 a number of photographs of other men.
23 These photographs were exhibited and you
24 recall testimony by Officer Shear, to the
25 employees of Riverside Men's Shop and

1 also to Mrs. Benson. The circumstances
2 of that showing of the photos and what
3 occurred, what was said then and there
4 is for you to determine just as any
5 other facts in this case are for your
6 determination.

7 I may, during the course of my
8 charge to you, discuss the facts briefly.
9 I will not do it in detail because I
10 think that certainly, the facts are for
11 you to determine and not for the Court
12 and I am afraid by talking about the
13 facts, that I may imply that I believe
14 certain facts are important and really,
15 this is something for your determination
16 under the general guidelines which I
17 will give to you.

18 Your determination may be made not
19 only on direct evidence, - that is, what
20 did a witness say, what did he hear,
21 what was said at a particular time, but
22 inferences which may be based upon
23 evidence which you find to be believable.
24 You are permitted to draw from facts
25 which have been proven such reasonable

1 inferences as seem justified in the light
2 of your own experience in life. This,
3 as we know, it may be considered as
4 circumstantial evidence. You may arrive
5 at a verdict based upon direct or based
6 upon circumstantial evidence.

7 The circumstantial evidence, as we
8 know in our own life, daily life, in our
9 own either family business or other
10 relationships, must be carefully applied,
11 must be reasonably applied and if the
12 application of it results in two infer-
13 ences, both reasonable, one pointing to
14 guilt and the other to innocence, then
15 we should accept the inference pointing
16 to innocence.

17 On the other hand, the law makes
18 no distinction between direct and
19 circumstantial evidence, but requires
20 that you find the defendant guilty on
21 either, - before you find the defendant
22 guilty, you must be convinced of his
23 guilt beyond a reasonable doubt.

24 You will essentially and mainly
25 find the facts in any trial and as in

1 this trial from the testimony of the
2 witnesses and when I talk about witnesses,
3 I mean all the witnesses in the case.

4 Mr. Williams testified as a witness
5 as he had a right to do and his testimony
6 here should be judged by the same stan-
7 dard as you judge the testimony of the
8 other witnesses. You should consider
9 in your determination of the witness's
10 testimony not only the direct examination
11 of any witness, but also cross examina-
12 tion of the witnesses.

13 I think without going into detail
14 on it, we have a number of versions,
15 a number of discrepancies in testimony
16 here. It is your job to sort out all
17 this material. You can compare the
18 testimony of one witness with that of
19 another, the physical facts as you
20 find them and know them to be, the other
21 exhibits which are in evidence an be an
22 aid to you in determining whether a
23 witness is worthy of belief. It comes
24 down to this; you are the sole judges of
25 the credibility of the witnesses and

1 the weight their testimony deserves.
2 You should carefully scrutinize the
3 testimony given, the circumstances under
4 which the witness testified and every
5 matter in evidence which tends to indi-
6 cate whether the witness is worthy of
7 belief.

8 In this case, especially the testi-
9 mony of witnesses Mr. Ridgeway and Mrs.
10 Benson, these are individuals who, by
11 their account of it, you may indicate
12 that they may have, or Mr. Allen has a
13 view they may not have committed criminal
14 conduct, certainly it was not the kind
15 of conduct by their own testimony which
16 should have gone on and the testimony
17 of that kind of a witness must be
18 examined with a special care and scrutiny
19 before you accept it. The testimony of
20 all the witnesses, of course, must be
21 determined along with their cross
22 examination and the testimony of the
23 other witnesses in the case. You should
24 consider the witness's intelligence, his
25 motive, state of mind, demeanor and

1 manner while on the stand. Consider
2 any relation which the witness may
3 bear to either side of the case, the
4 manner in which the witness might be
5 affected by the verdict and the extent
6 to which, if at all, the witness is
7 either supported or contradicted by
8 other evidence in the case. The mere
9 fact that the testimony of a witness is
10 inconsistent or that there are discrepan-
11 cies in his testimony does not necessarily
12 mean that you must reject the witness's
13 credibility. You must determine whether
14 the inconsistency or discrepancy is the
15 result of falsification or whether, on
16 the other hand, is the result of inno-
17 cent miscalculation or inaccurate obser-
18 vation.

19 The fact that the Government is
20 a party to the case is not to influence
21 you in any way. You are to consider the
22 United States Attorney and only give him
23 the same listening to and the same
24 consideration that you would give to any
25 other lawyer in the case, Mr. Allen.

1 In considering the testimony of
2 witnesses, if you believe that any
3 witness has testified falsely about any
4 material matter, you may disregard, if
5 you make that finding, his whole testi-
6 mony, if you choose, or you may accept
7 that part of his testimony which you
8 find to be believable.

9 In this case, evidence has been
10 introduced tending to establish an
11 alibi. This amounts to a contention
12 that defendant was not present at the
13 time when, or at the place where he is
14 alleged to have committed the offense
15 charged in the indictment. If, after
16 consideration of all the evidence in
17 the case, you have a reasonable doubt
18 as to whether defendant was present at
19 the time and place the alleged offense
20 was committed, you must acquit him.

21 You will keep in mind that the law
22 never imposes upon a defendant in a
23 criminal case the burden or duty of
24 calling any witnesses or producing any
25 evidence. I bring this up at this time

1 because you know that the Government
2 is required to prove the guilt of the
3 defendant beyond a reasonable doubt.
4 The defendant is not required to disprove
5 his guilt or to prove his innocence, so
6 as far as the alibi is concerned, the
7 Government has the burden by evidence
8 in the case of proving to your satis-
9 faction beyond a reasonable doubt, that
10 the defendant was present at the time
11 and place alleged where the offense was
12 committed and he actually did commit
13 the offense, so merely because Mr.
14 Williams in this case had Mr. Pitts
15 testify about where he was at another
16 time does not shift any burden to him
17 at all. The burden remains upon the
18 Government to prove guilt beyond a
19 reasonable doubt.

20 A reasonable doubt is a fair doubt
21 based upon reason and common sense and
22 arising from the state of the evidence.
23 Of course, it is rarely possible to
24 prove anything to an absolute certainty.
25 Proof beyond a reasonable doubt, there-

1 fore, is established if the evidence is
2 such as you would be willing to rely
3 and act upon it in the most important
4 of your own affairs.

5 A defendant is not to be convicted
6 on suspicion, conjecture or speculation.
7 A reasonable doubt may arise not only
8 from the evidence produced, but also
9 from the lack of evidence. Since the
10 burden is upon the prosecution to prove
11 the accused guilty beyond a reasonable
12 doubt of every essential element of the
13 crime charged, a defendant has the right
14 to rely upon failure of the prosecution
15 to establish such proof. A defendant
16 may also rely upon evidence brought out
17 on cross examination of witnesses for
18 the prosecution. The law does not
19 impose upon a defendant the duty of
20 producing any evidence. Remember,
21 however, that a reasonable doubt is such
22 a doubt as is based upon reason and as
23 appeals to your power of logic. It is
24 a doubt arising out of something tangible
25 in the evidence in the case or something

1 lacking in the case. It is to be
2 distinguished from a doubt which might
3 be based upon emotion. If you feel
4 uncertain and not fully convinced that
5 the defendant in this case is guilty of
6 the crime charged and you believe you
7 are acting in a reasonable manner and
8 you believe a reasonable man or woman
9 in a matter of like importance would
10 hesitate to convict because of such a
11 doubt as you have, that is a reasonable
12 doubt to the benefit of which the
13 defendant is entitled. If you have such
14 a doubt, you must acquit.

15 The rule that the Government must
16 prove every essential element of the
17 crime beyond a reasonable doubt does
18 not mean that you must believe the
19 testimony of every Government witness
20 as being true beyond a reasonable doubt
21 or that every piece of evidence they
22 have offered is true beyond a reasonable
23 doubt. It means that the credible
24 evidence as weighed and as found by
25 you under the instructions given to you

1 now or whatever instruction I gave to
2 you during the course of this trial and
3 as viewed as a whole, must establish
4 every essential element of the crime
5 and defendant's guilt beyond a reasonable
6 doubt.

7 As I have already told you, evidence
8 of defendant's previous conviction is
9 to be considered by you only insofar as
10 it may affect his credibility as a witness
11 and must not be considered as evidence
12 of guilt of the crime for which the
13 defendant is on trial.

14 In this case, there are two counts.
15 I will send the indictment to you as a
16 guide to you in the jury room. You
17 must keep in mind, however, that the
18 indictment is no evidence of any criminal
19 conduct on the part of the accused. The
20 only purpose of an indictment is to
21 inform a defendant of the charge placed
22 against him so that he can prepare his
23 defense and to make sure that he is not
24 charged again for the same criminal
25 conduct.

1 Count 1 of the indictment in
2 summary fashion I will relay it to you
3 and it will be before you for your
4 consideration, charges that on the 15th
5 of May, 1976, that the defendant
6 Joseph Williams did receive and unlaw-
7 fully have in his possession a check and
8 the check is described, which had been
9 stolen, taken and abstracted from the
10 mail and that the defendant Joseph
11 Williams well knew that the said check
12 had been stolen, taken and abstracted
13 from the mail. It is not necessary
14 that the Government prove under this
15 particular charge that Mr. Williams was
16 the person who stole the check, but they
17 must prove beyond a reasonable doubt
18 that he had the check in his possession
19 and he knew that the check had been
20 stolen.

21 The statute which he is accused
22 of violating is Title 18, Section 1708
23 which reads, in part, "Whoever unlaw-
24 fully has in his possession any mail
25 or any article or thing contained there-
in which has been stolen, taken,
H. T. Noel & E. F. Kuisley

1 embezzled or abstracted from the mail",
2 and he knew that it was so taken, shall
3 have committed an offense against the
4 United States.

5 The Government must prove beyond
6 a reasonable doubt, the following
7 essential elements to establish the
8 guilt of Mr. Williams: First, that the
9 check described in Count 1 of the
10 indictment was stolen, taken or abstracted
11 from the United States mails. That is,
12 from out of any mailbox, letterbox,
13 mail receptacle and so forth or any
14 authorized depository for mail matter.

15 Secondly, that the defendant re-
16 ceived or possessed a check on or about
17 May 15, 1976 after it had been stolen,
18 taken or abstracted from the mail, and
19 thirdly, that the defendant knew that
20 the check had been stolen, taken or
21 abstracted from the mail.

22 It may, under the circumstances
23 here of this case, this charge may
24 apply; if you find and this finding
25 would be certainly up to you, that Mr.

1 Williams did, indeed, have possession
2 of the check, you may, and that is
3 certainly a judgment for you to make,
4 you may keep in mind the following
5 instruction: Possession of property
6 recently stolen, if not satisfactorily
7 explained, is a circumstance from which
8 a jury may reasonably draw an inference
9 and find, in the light of surrounding
10 circumstances shown by the evidence in
11 the case, that the person in possession
12 knew that the property had been stolen.
13 That does not mean, certainly, that
14 simply because a person has in his
15 possession property recently stolen,
16 that an inference is created that he
17 knew it was stolen. For example, if
18 the circumstances were such that I
19 had a letter which had recently been
20 stolen from the mail, but on the other
21 hand, the person who delivered it to me
22 told me a story which is believable that
23 it had been given to them by the owner
24 of the letter, that they had the right
25 to have it or a number of other explana-

1 tions which could have been made, then
2 certainly, this particular inference
3 does not hold.

4 The term "recently" is a relative
5 term. It has no fixed meaning. Whether
6 the property may be considered as
7 recently stolen depends upon the nature
8 of the property, the facts and circum-
9 stances shown by the evidence in the
10 case. The longer the period of time
11 since the theft, the more doubtful
12 becomes the inference which may reason-
13 ably be drawn from unexplained possession.

14 If you find, beyond a reasonable
15 doubt, from the evidence in the case,
16 that the check described in the indict-
17 ment was stolen and then while recently
18 stolen, the property was in the possession
19 of the defendant, you may find, from
20 those facts, - you may, from those facts,
21 draw the inference that the check was
22 possessed by the defendant with knowledge
23 that the property was stolen. Again,
24 you must keep in mind that whether or
25 not the defendant had possession of the

1 check is a point which, in itself, the
2 Government must prove beyond a reasonable
3 doubt, and we will discuss that in
4 greater detail in a few minutes.

5 The law never, - again, keep in
6 mind that the law never imposes upon a
7 defendant in a criminal case the burden
8 or duty of calling any witnesses or
9 producing any evidence, so if you should
10 find here from your analysis of the case,
11 "Well, there is something here that is
12 bothering me or why didn't that come
13 into the case or why didn't that come
14 into the case", keep in mind that that
15 is an attitude you can take for the
16 Government's presentation that the
17 Government has failed and if you find
18 they have failed to prove an essential
19 element. then you must acquit, but, on
20 the other hand, you cannot say during
21 your deliberations or to yourself
22 "Well, why didn't the defendant bring
23 this fact out or bring this particular
24 evidence into the case". The defendant,
25 in a criminal case, does not have the

1 burden of calling any witnesses or
2 producing any evidence.

3 It is your province to determine
4 whether the facts and the circumstances
5 shown by the evidence in the case warrant
6 any inference which the law permits you
7 to draw from possession of recently
8 stolen property. If any possession the
9 accused may have had of recently stolen
10 property is consistent with innocence
11 or if you entertain reasonable doubt,
12 then you must acquit Mr. Williams in
13 this case.

14 What do we mean by the words,
15 "have in his possession knowingly". An
16 act is done knowingly if done volun-
17 tarily and intentionally and not because
18 of accident or mistake or other innocent
19 reason. The purpose of adding the
20 word "knowingly" was to make sure that
21 no one would be convicted for an act
22 done because of mistake or accident or
23 other innocent reason. As stated before,
24 with respect to this offense, specific
25 intent must be proven beyond a reasonable

1 doubt before there can be any conviction.
2 That is, you must find, as an element
3 of the particular count, that the
4 defendant specifically intended to
5 possess the check knowing that it was
6 stolen. He must have the facts and he
7 must have the specific intent to violate
8 or to disregard the law.

9 As far as knowledge is concerned,
10 you may keep the following in mind:
11 While guilty knowledge cannot be established
12 by evidence of negligence or even foolish-
13 ness on the part of a defendant, such
14 knowledge as is required by the law may
15 be established if the defendant was
16 aware of the high probability that the
17 check was stolen, unless he actually
18 believed that the check was not, in
19 fact, stolen. Thus, if you find that
20 defendant acted with a reckless disre-
21 gard as to where the check came from
22 or as to whether the check was or was
23 not stolen, and if you find that the
24 defendant acted with a conscious purpose
25 to avoid learning the truth as to where

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1 meaning, but it should be defined. It
2 means acquires or possesses as a result
3 of some wrongful or dishonest act or
4 taking, whereby a person willfully
5 obtains or retains possession of property
6 which belongs to another without or
7 beyond any permission given or with the
8 intent to deprive the owner of the
9 benefit of ownership.

10 In this case, we go on then to
11 Count 2. Count 2 of the indictment
12 charges the defendant with uttering
13 and publishing a United States Treasury
14 check payable to Elar Parker in the
15 amount of \$382.55 which the Government
16 alleges contains a forged endorsement
17 on the back. That is the writing
18 "Elar Parker".

19 The statute is an alleged violation
20 of Title 18 United States Code,
21 Section 495 which provides, in part,
22 as follows, "Whoever falsely makes,
23 alters, forges any writing for the
24 purpose of obtaining or receiving or
25 of enabling any other person either

1 directly or indirectly to obtain or
2 receive from the United States or any
3 offices or agents thereof, any sum of
4 money or whoever utters or publishes
5 as true any such false forged altered
6 writing with intent to defraud the
7 United States, knowing the same to be
8 false, altered or forged, shall be
9 guilty of an offense against the United
10 States".

11 As far as this count is concerned,
12 the Government must prove beyond a
13 reasonable doubt, the following essential
14 elements: The act or acts of placing
15 or offering to place in circulation,
16 United States Treasury check described
17 in Count 2 of the indictment. Secondly,
18 that defendant did such act or acts
19 with knowledge the payee's endorsement
20 on the reverse side or back of the
21 check was a forgery. Thirdly, doing
22 such act or acts willfully and with
23 intent to defraud the United States.

24 Again, the burden or proof, the
25 Government must prove defendant's guilt

1 beyond a reasonable doubt and again the
2 law does not impose upon the defendant
3 the burden of offering any proof.

4 The writing as set forth in this
5 particular statute includes a check
6 drawing on the Treasurer of the United
7 States as this check was drawn. The
8 writing of a payee's endorsement on a
9 genuine United States Treasury check by
10 a person other than the payee, if done
11 willfully and without authority, and
12 with intent to defraud, is a forgery
13 within the meaning of the statute.

14 The phrase "utters or publishes
15 as true" as used in the statute means to
16 make or attempt any use of a written
17 instrument or document such as an
18 attempt to place a check in circulation
19 whereby or in connection with which some
20 assertion, representation or claim is
21 made to another in some way or manner
22 directly or indirectly, expressly or
23 impliedly or by words or conduct that the
24 check or document is genuine.

25 The evidence in the case need not

1 show that the check was actually
2 cashed. That is to say, it is not
3 necessary to prove anyone actually
4 obtained or received any money from the
5 United States as a result of any
6 forged endorsement if such there was on
7 the check in question. On the other
8 hand, the fact that some money, if you
9 find that some money was paid out here
10 because of activities of the defendant,
11 then you may take that into account as
12 to whether or not there was actually an
13 uttering of the check.

14 It is important to keep in mind
15 that Mr. Williams is not charged with
16 forging the name of Elar Parker on the
17 back of the check. He is charged with
18 presenting for payment, a check on which
19 the Government claims there was a forged
20 endorsement. Whoever made the forged
21 endorsement is beside the point and if
22 Mr. Williams made it and he knew that
23 the endorsement there was forged, even
24 though it was forged by another person,
25 and he knew that it was not the endorse-

1 ment of Mr. Parker, then that element
2 of the particular crime is satisfied.

3 Again, the Government must prove
4 a specific intent to defraud. It is an
5 essential element of Count 2 in the
6 indictment.

7 The Government need not establish
8 that anyone was actually defrauded, but
9 only that the accused acted willfully
10 and with the intent to defraud. To
11 act with intent to defraud means to act
12 with a specific intent to deceive or
13 cheat for the purpose of either causing
14 some financial loss to another or bring-
15 ing about some financial gain to one's
16 self.

17 In this case, we have certainly some
18 large questions here. That is, we have
19 the question of credibility of witnesses.
20 Mr. Williams took the stand and he
21 testified and there is certainly a sharp
22 difference in testimony between his
23 testimony and the testimony of Mrs.
24 Benson and Mr. Ridgeway.

25 We also have the testimony concerning

1 the identification of the defendant.
2 This again, the rules of evidence which
3 I explained to you about how to size up
4 the testimony of witnesses, how much
5 you should believe and rely upon the
6 testimony of witnesses, this certainly
7 applies to the identification testimony
8 given by the witnesses at the Riverside
9 Men's Shop. Certainly, it should be
10 approached with great care and with
11 caution. All of the circumstances should
12 be carefully gone into to determine
13 whether or not their judgment here,
14 whatever their judgment was on the
15 stand, was accurately made before you
16 accept it to the detriment of Mr.
17 Williams. You must certainly make a
18 very careful analysis of the testimony
19 of all of these witnesses.

20 Identification testimony is an
21 expression of belief or impression by
22 the witness. Its value depends upon the
23 opportunity the witness had to observe
24 the offender at the time of the offense
25 and to make a reliable identification

1 later. In appraising the identification
2 testimony of the witness, you should
3 keep some the following, or should
4 keep the following in mind and there
5 are other elements which may occur to
6 you which are similar which you should
7 keep in mind.

8 First of all, are you convinced
9 that the witness had the capacity and
10 adequate opportunity to observe the
11 offender; whether the witness had an
12 adequate opportunity to observe the
13 person at the time of the offense will
14 be affected by such matters as how long
15 or short a time was available, how far
16 or close the witness was, how good were
17 the lighting conditions, whether the
18 witness had had occasion to see or know
19 the person in the past or to see the
20 person on a subsequent occasion. In
21 general, a witness basis any identifica-
22 tion he makes on his perception through
23 the use of his senses. Usually, a
24 witness identifies an offender by the
25 sense of sight, but this is not
necessarily so and he may use other

1 senses. Were there things which occurred
2 at the time which, in the reasonable
3 course of human events, you would believe
4 that the witness would have some reason
5 to keep in mind the appearance of the
6 particular person before him. That is,
7 of course, something which you should
8 take into account. Are you satisfied
9 that the identification made by the
10 witness subsequent to the offense was
11 the product of his own recollection.
12 You may take into account both the
13 strength of the identification and the
14 circumstances under which the identifi-
15 cation was made. You recall the testi-
16 mony of the police officers and the
17 witnesses who testified about the
18 arrangements which were made for the
19 photographic identification. Did, in
20 any way, the police officer improperly
21 hint to the witness as to what person
22 he should select from the mix.

23 You will have the photographs in
24 front of you. Was this a fair mix.
25 Certainly, if, at a time of a particular

1 event, the witness remembers that the
2 defendant had on a yellow slicker and
3 then the photographs come in and one
4 person has on a yellow slicker and all
5 the others have on regular clothing, you
6 would say, "That does not seem to be
7 quite the fair way to go about it", or
8 if one person said "I recall that the
9 person was fat and a large man", and all
10 of the other contrasting photographs are
11 those of a slim individual, again that
12 would be something that you would take
13 into account to determine whether the
14 photographic identification was fairly
15 made.

16 If the identification by the witness
17 may have been influenced by the circum-
18 stances under which the defendant was
19 presented to him for identification, you
20 should scrutinize the identification
21 with great care. You may consider the
22 length of time that elapsed between the
23 occurrence of the crime and the next
24 opportunity of the witness to see the
25 defendant, or, in this case, to see the

1 photographs which were displayed of the
2 defendant and of other individuals as
3 a factor bearing upon the reliability
4 of the identification. You may take
5 into account that an identification made
6 by picking the defendant out of a group
7 of similar individuals is generally the
8 more reliable than one which results
9 from the presentation of the defendant
10 alone or, for example, one picture alone
11 to the witness.

12 You may take into account, any
13 occasions on which the witness failed to
14 make an identification of the defendant
15 or made an identification that was in-
16 consistent with his identification at
17 trial, or at the prior meeting with
18 the police officer. Whether or not
19 there was any identification here in
20 court is for you to determine. How
21 much weight that should be given because
22 of the passage of time, is for you to
23 determine. Whether the fact here, it
24 is obvious Mr. Williams, - this court
25 was not crowded with spectators; most of

1 the time there were only counsel and
2 Mr. Williams in the court, and certainly,
3 if a witness comes in and there is only
4 one person in the courtroom and he is
5 asked to make an identification un-
6 consciously his mind may be influenced
7 so that he would say "They wouldn't ask
8 me to make an identification unless this
9 is the person here". Whether or not
10 this occurred, is for you to determine
11 but it is certainly something you should
12 keep in mind and it is the reason why
13 it is important that you scrutinize the
14 identification testimony most carefully.

15 You should consider the believability
16 of each identification witness in the
17 same way as you have of the other
18 witnesses, consider whether he had the
19 capacity and opportunity to make a
20 reliable observation on the matter
21 covered in his testimony and all the
22 other rules, whether there is any inter-
23 est, any bias in the witness, any
24 prejudice, those are all considerations
25 for you to make and whether this colored

1 the testimony of any identification
2 witness in any way, if you find that it
3 did, then you should discount his testi-
4 mony to an appropriate degree.

5 I again emphasize that the burden
6 on the Government extends to every
7 element of the crime charged and this,
8 in particular, includes the burden of
9 proving beyond a reasonable doubt, the
10 identity of the defendant as the perpe-
11 trator of the crime with which he stands
12 charged. That is, as far as Count 2,
13 you must believe beyond a reasonable
14 doubt that Mr. Williams was, indeed the
15 person in the Riverside Men's Shop at the
16 time and place in question and that he,
17 indeed, did present this check and he
18 knew at the time that it was forged and
19 he presented it with the specific
20 intent to defraud, to deceive and either
21 to obtain financial gain for himself or
22 to get money from either the Government
23 or from the Riverside Men's Shop.

24 After examining the testimony, if
25 you have a reasonable doubt as to the
accuracy of the identification, then

1 you would find the defendant not guilty.

2 Certainly, the facts are so in-
3 extricably connected here that it would
4 seem to the Court that as far as the
5 identification, the possession here,
6 that as far as proving Count 1, the
7 possession of the mail matter, that
8 again, the Government must prove beyond
9 a reasonable doubt as to Count 1 that
10 the person in the store was Mr. Williams
11 and at that time, he presented, he had
12 possession of the check. You will, on
13 that part, remember that an element
14 must be that he not only had possessed
15 the check, but under the circumstances,
16 that he knew that the check had been
17 stolen and extracted from the mails.

18 When you go to the jury room to
19 begin your deliberation, it makes sense
20 for you to pick one of your number as
21 a foreman. You will recall that you
22 will take up each count separately and
23 your vote must be by unanimous verdict
24 on each count.

25 If you have any question which you

1 want to put to the Court, you should
2 write it out and give it to the Marshal.
3 You should not attempt to communicate
4 with the Court in any other way. The
5 Marshal will deliver the note to me
6 and then I will have the lawyers come
7 together and determine what to do and
8 have you in and attempt to answer your
9 question as well as we can.

10 At this time, I will ask you to
11 step into the corridor for a minute so
12 that I can hear any further requests or
13 any objections the lawyers may have
14 to my charge.

15
16 (Jury escorted from the courtroom.)

17
18 THE COURT:

Mr. Burns.

19 MR. BURNS:

No requests, your Honor, no
20 exceptions.

21 THE COURT:

Mr. Allen.

22 MR. ALLEN:

The same, your Honor; no requests,
23 no exceptions.

24 THE COURT:

Mr. White, have the jury come back.
25 You can just have them step across the

1 rail. Mr. Williams and Mr. Allen, will
2 you be hear at 9:30, please, and I will
3 swear the jury in the morning.
4

5 (Jury returns to the courtroom.)
6

7 THE COURT:

Ladies and gentlemen, that concludes
8 our work for the day. We will come
9 together tomorrow morning. Go to the
10 jury room at 9:30 and then I will have
11 you come up at that time and we will have
12 you sworn and at that time, begin your
13 deliberation. Again, it is most
14 important you keep in mind that you do
15 not discuss this matter with anyone at
16 all including your fellow jurors over-
17 night; that you wait until you get to
18 the jury room before you start to de-
19 liberate.

20 Thank you, and we will see you
21 tomorrow.
22

23 (Recess taken at 4:47 p.m.)
24

25 * * * * *

* * *

H. T. Noel & E. F. Kuisley

1 PROCEEDINGS: After recess, 11:52 a.m.
2 APPEARANCES: As before noted.
3 (Defendant present.)
4 (Jury not present.)
5
6 THE COURT: Mr. Williams, Mr. Allen, Mr. Burns,
7 step up. In United States against
8 Joseph Williams, Criminal 1976-84, I
9 have a note from the jury which reads
10 as follows, "Are each counts separate
11 and can different verdicts be brought
12 in or is the first count dependent on
13 the second or vice versa". The answer
14 certainly is "yes", that the jury must
15 consider each count separately and they
16 can bring in different verdicts on each
17 count.
18 MR. BURNS: They can?
19 THE COURT: They can bring in different
20 verdicts.
21 MR. BURNS: I agree. I was not sure if that
22 is what I heard you say, though.
23 THE COURT: "Is the first count dependent on
24 the second". Not as a matter of law.
25 The elements, the facts which relate

1 to the first may relate to the second,
2 but the elements in each must be satis-
3 fied beyond a reasonable doubt. Before
4 I have the jury come, are there any
5 comments or suggestions you have?

6 MR. ALLEN:

No.

7 THE COURT:

All right. Have the jury come in,
8 please.

9
10 (Jury returns to the courtroom.)

11
12 THE COURT:

You may be seated. Ladies and
13 gentlemen, I have a note from you which
14 you are familiar with, but which I will
15 read again so it will be brought to your
16 immediate attention. "Are each counts
17 separate and can different verdicts be
18 brought in or is the first count
19 dependent on the second or vice versa?"
20 Ladies and gentlemen, you have the
21 obligation to consider each count
22 separately. There are different elements
23 which must be proven beyond a reasonable
24 doubt as to each count so you must con-
25 sider them separately.

1 The second part of the first
2 question, "Can different verdicts be
3 brought in". Certainly. If you find
4 that the Government has proven its case
5 beyond a reasonable doubt as to one
6 count, then your verdict may be guilty.
7 If you conscientiously believe that the
8 Government has failed to prove their
9 case beyond a reasonable doubt as to the
10 other count, then your verdict would
11 be not guilty. That is up to you. It
12 is up to you depending upon the evidence,
13 how you see the evidence and how you see
14 the law which should be applied to the
15 evidence in the case.

16 Do you think you can return and
17 continue your deliberation?

18 JUROR NUMBER 5: Yes, sir.

19 THE COURT: You're foreman, you believe so?

20 JUROR NUMBER 5: Yes, sir.

21 THE COURT: All right. By a show of hands, do
22 you all agree with your foreman?

23 THE JURY: Yes.

24 THE COURT: Fine. You may continue your
25 deliberation. You may go down with the

1 Marshal, please, and continue your
2 deliberation.

3
4 (Recess taken at 11:54 a.m., pending
5 deliberation of the jury.)
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1 PROCEEDINGS:

December 21, 4:45 p.m.

2 APPEARANCES:

As before noted.

3 (Defendant present.)

4 (Jury present.)

6 THE COURT:

Call the roll, Mr. White.

8 (Jury roll called. All jurors
9 present.)

11 THE COURT:

As I understand it, ladies and
12 gentlemen, you have come to a verdict
13 on Count 1; thus far, you are unable to
14 agree on Count 2. You say "But we are
15 hung up on Count 2 and cannot reach a
16 decision". You have come to a unanimous
17 verdict on Count 1?

18 THE FOREMAN:

Yes, sir.

19 THE COURT:

All right. Mr. White, will you
20 take the verdict on Count 1?

21 THE CLERK:

Yes, your Honor. Will the Foreman
22 kindly rise. What is your verdict on
23 Count 1 of the indictment?

24 THE FOREMAN:

Count 1 of the indictment, we find
25 the defendant not guilty.

1 THE COURT:

2 All right. Why not sit down for a
3 minute, please. You have been working
4 on this today and I know you have been
5 working on it vigorously. In all the
6 problems we have, I think you should go
7 back and you should make another attempt
8 at reaching a unanimous verdict on
9 Count 2. You have worked manfully and
10 womanfully, I better say quickly, and
11 you have been able to reach this verdict
12 on Count 1. It seems to me that if you
13 go back and you look at the evidence
14 from a different light, you take a
15 different approach, you take a different
16 starting position, perhaps that you could
17 also resolve your difficulties as to
18 Count 2.

19 I am not asking anyone to give up
20 their conscientiously held, firmly
21 held beliefs which are zeroed in on
22 reason, zeroed in on responsible review
23 of the evidence. I certainly do not
24 want you to change your mind for any
25 petit reason or for any reason along
the lines "Well, everyone else looks

1 at it this way, therefore, I might as
2 well go along". On the other hand, I
3 seriously charge you to re-examine your
4 viewpoint, to try again and listen
5 carefully to the arguments and discussions
6 of your fellow jurors and then, if you
7 find that your view that you have ad-
8 hered to is not supported by reason and
9 common sense and that the arguments of
10 your fellow jurors make better sense
11 than yours, then you are following your
12 conscience and you are following your
13 oath as a juror if you then would say
14 "Well, I will change my mind", so that
15 I think you ought to go back for a while
16 and try again as far as Count 2 is
17 concerned. Naturally, if there is any
18 problem you have on the law or the facts,
19 you can write out a question and give it
20 to the Marshal and I will be glad to
21 take a look at it, so why don't you
22 return for a while and continue your
23 deliberation. You may go with the
24 Marshal.

25 (Jury escorted from the courtroom.)

H. T. Noel & E. F. Knisley

1 THE COURT:

Mr. Burns, Mr. Allen, either one
2 of you have any suggestions for the
3 Court?

4 MR. BURNS:

I am sorry. The door was just
5 slamming as you were finishing your
6 question. I didn't catch the end of it.

7 THE COURT:

Do you have any suggestion for the
8 Court?

9 MR. BURNS:

No, I have no suggestion.

10 THE COURT:

Mr. Allen.

11 MR. ALLEN:

Well, Judge, I think that certainly
12 not with respect to what the Court told
13 the jury. Maybe we ought to let them
14 go a little longer.

15 THE COURT:

We have the practical problem if
16 the jury does not return a verdict on
17 Count 2, then it is still left unresolved
18 and it is left as a matter that has to
19 be tackled again, unless the United
20 States Attorney should say "We move to
21 dismiss as to Count 2". It appears to
22 me that since there are certainly
23 fact questions here in this case and the
24 jury have resolved the fact that if
25 perhaps it came to the knowledge

1 question, it seems to me that would be
2 the most logical place for them to find
3 a hole in the armor, and I can see that
4 under the circumstances, the sort of
5 confusing testimony about the lady
6 witness and her brother, about how they
7 got the check and so forth, that he,
8 Mr. Williams, according to the jury's
9 view, could not have known beyond a
10 reasonable doubt that the check actually
11 was stolen from a mail receptacle; that
12 if he was there on the premises and he
13 could have understood that the owner of
14 the check gave it to the people or they
15 got it in some other way, but as far
16 as proving beyond a reasonable doubt that
17 he knew that the check was stolen, maybe
18 that is where the failure was. On the
19 other hand, we have all the testimony of
20 all of the people at Riverside Men's
21 Shop as to identification and we have
22 Ridgeway's testimony about traveling to
23 Riverside Men's Shop, and so I think
24 there is a fact question that is here
25 and I do not see how I could, in any way,

1 grant a motion for judgment of acquittal
2 based upon the evidence that is present
3 before us.

4 MR. ALLEN:

5 In all honesty, Judge, I hadn't
6 really thought about it on that approach
7 and in light of that fact, in light of
8 what you just said that may very well
9 be the case. I kind of had the feeling
10 that maybe they reached the conclusion
11 that they were going to disbelieve all
12 of the testimony by both Ridgeway and
13 his sister concerning my client with
14 respect to possession and were trying
15 to fight through the question over
16 whether or not he was identified properly,
17 but other than that, I guess they
18 couldn't have reached that conclusion
19 unless they made the decision, - there
20 must have been some sort of a decision
21 there concerning knowledge or otherwise
22 that doesn't make any sense.

23 THE COURT:

24 Because if they disbelieve
25 Ridgeway and Mrs. Benson entirely, then
they would have acquitted, I think, on
Count 2 as well.

1 MR. ALLEN: They might not have gotten to that
2 yet. I just can't figure it out, Judge,
3 to be honest with you. I couldn't figure
4 it out this morning when they came in and
5 asked for those instructions.

6 THE COURT: Mr. Burns, anything you want to
7 suggest?

8 MR. BURNS: No, just keep working is all I
9 ask for.

10 THE COURT: All right.

11 MR. ALLEN: There is one thing, your Honor;
12 do you have any idea what time you may - -

13 THE COURT: It is twenty after 4:00. I
14 certainly wouldn't have them stay after
15 5:30 and I was thinking about 5:00
16 o'clock, but I think I would have them
17 come back tomorrow.

18 MR. ALLEN: Yes.

19 THE COURT: Why not stay until 5:30 and if
20 they have not brought in a verdict, then
21 we will bring them back tomorrow.

22 MR. BURNS: They don't seem to show the strain
23 that some jurors show after lengthy
24 deliberations. They seem rather
25 composed, I think.

1 THE COURT:

All right.

2

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(Recess taken at 4:20 p.m.,

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pending deliberation of the jury.)

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1 PROCEEDINGS:

After recess, 5:05 p.m.

2 APPEARANCES:

As before noted.

3

(Defendant present.)

4

(Jury present.)

5

6 THE CLERK:

Will the Foreman kindly rise.

7

Members of the jury, have you agreed

8

upon your verdict?

9 THE FOREMAN:

No, we haven't.

10 THE COURT:

11

All right. Ladies and gentlemen,

12

in view of the hour and also the other

13

matters which I know probably many of

14

you have to think about at this time of

15

the year, what we will do is we will be

16

in recess until tomorrow morning. Come

17

back to the jury room at 9:30 and I

18

think, and it happens quite often, that

19

after juries have had an opportunity to,

20

as they say, sleep on it, to think about

21

it overnight, and come back the following

22

morning with a fresh start and I

23

encourage you to start your discussion

24

at a different place from where you left

25

off with a different viewpoint. You

can think about it overnight, as you are

1 doing whatever other tasks you have and
2 bring those recent viewpoints to the
3 jury room in the morning, so we will now
4 be in recess in this case until tomorrow
5 morning at 9:30.

6 Certainly, my charge to you earlier
7 that you may not discuss this matter with
8 anyone or talk about it among yourselves
9 if some of you ride home together, talk
10 about something else. Do not talk about
11 the case and go right to the jury room
12 tomorrow morning and when you are all
13 there at 9:30, then you can begin your
14 deliberation at that time.

15 You may now go out with the Marshal,
16 please.

17 Mr. Burns, Mr. Allen, thank you.
18 We will see you all in the morning.

19
20 (Recess taken at 5:07 p.m.)

21
22
23 * * * * *

1 PROCEEDINGS: December 22, 1976, 10:23 a.m.
2 APPEARANCES: As before noted.
3 (Defendant present.)
4 (Jury present.)
5
6 THE COURT: Call the roll, please, Mr. White.
7
8 (Jury roll called. All jurors
9 present.)
10
11 THE CLERK: Will the Foreman please rise.
12 Members of the jury, have you agreed
13 upon your verdict on Count 2 of the
14 indictment?
15 THE FOREMAN: Yes, we have.
16 THE CLERK: What is your verdict?
17 THE FOREMAN: We find the defendant guilty of
18 the second count.
19 THE CLERK: Please listen as the Court records
20 your verdict. You find the defendant
21 Joseph Williams guilty on Count 2 as
22 charged in the indictment?
23 THE FOREMAN: Yes.
24 THE CLERK: So say you all?
25 THE JURY: Yes.

1 THE COURT:

Mr. Allen, do you desire the jury
2 be polled?

3 MR. ALLEN:

No, your Honor.

4 THE COURT:

All right. The verdict is recorded,
5 guilty on Count 2. Ladies and gentlemen,
6 you will now be discharged from considera-
7 tion in this case. I thank you very
8 much for your hard work and your efforts
9 in this lawsuit and you will now be
10 discharged over the Christmas and New
11 Year's recess break. You will not be
12 called back in until sometime after the
13 1st of the year. You will be notified
14 by Mr. White before you come in again.
15 Thank you and I hope all of you have a
16 very pleasant and happy holiday season.
17 You may walk out with the Marshal.

18
19 (Jury escorted from the courtroom.)
20

21 THE COURT:

Mr. Burns, may Mr. Williams remain
22 on bail?

23 MR. BURNS:

Yes, I recommend that, your Honor.

24 THE COURT:

You may remain on bail pending
25 sentence. I will set the sentence in

1 this case for February 7th. Mr. Allen,
2 pursuant to Rule 29 and Rule 33 of the
3 Federal Rules of Criminal Procedure,
4 if you desire to make any motions against
5 the verdict of the jury rendered here,
6 those motions must be made in writing
7 and made in seven days. I may extend
8 the time, but I cannot extend the time
9 unless you make the motion within a
10 seven day period.

11 MR. ALLEN:

Very good, your Honor.

12 THE COURT:

13 At this time, go to the Probation
14 Office on the fifth floor and meet with
15 Mr. Schaeffer and his representatives
and begin the presentence report.

16 MR. ALLEN:

Very good, Judge.

17
18 (Trial herein concluded at 10:25
19 a.m.)

20
21
22 * * * * *

AFFIDAVIT OF SERVICE BY MAIL

RE: U.S.A.

vs

Joseph S. Williams

State of New York)
County of Genesee) ss.:
City of Batavia)

Leslie R. Johnson

I, _____ being
duly sworn, say: I am over eighteen years of age
and an employee of the Batavia Times Publishing
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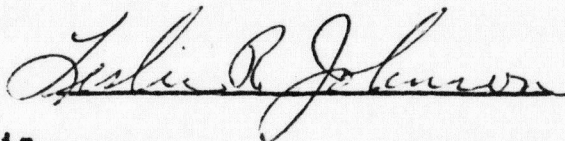
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I mailed _____ copies of a printed Appellee in Appendix & Brief
the above case, in a sealed, postpaid wrapper, to:

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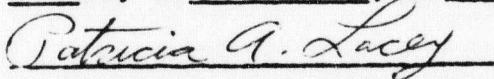
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York. The package was mailed Special Delivery at
about 4:00 P.M. on said date at the request of:

Richard J. Arcara, U.S. Attorney, Att: Theodore J. Burns, Assistant
U.S. Attorney
502 U.S. Courthouse, Buffalo, New York 14202



Sworn to before me this

10th day of June, 1977



PATRICIA A. LACEY
NOTARY PUBLIC, State of N.Y., Genesee County
My Commission Expires March 30, 1977